

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-10291-BB

MERCEDES-BENZ U.S. INTERNATIONAL, INC.,

Petitioner -
Cross Respondent,

versus

INTERNATIONAL UNION, UAW,

Intervenor,

NATIONAL LABOR RELATIONS BOARD,

Respondent -
Cross Petitioner.

Petitions for Review of a Decision of the
National Labor Relations Board

Before: MARTIN, ANDERSON and BLACK,* Circuit Judges.

BY THE COURT:

* MARTIN, Circuit Judge, dissenting in part.

JUDGMENT

The Court, by majority, filed an opinion dated October 3, 2016 directing entry of judgment enforcing in part the order of the National Labor Relations Board issued November 26, 2014, in Board Case Nos. 10-CA-112406, 10-CA-115917 and 10-CA-121232, reported at 361 NLRB No. 120. The National Labor Relations Board filed a proposed judgment on October 13, 2016. Mercedes-Benz U.S. International, Inc. disagreed with the National Labor Relations Board's proposed judgment and filed its own proposed judgment on October 24, 2016. The Court hereby settles the judgment and directs entry without further hearing or argument pursuant to Fed. R. App. P. 19. In conformity with the opinion of the Court, it is hereby

ORDERED AND ADJUDGED by the Court that Mercedes-Benz U.S. International, Inc., Vance, Alabama, its officers, agents, successors, and assigns, shall abide by the attached Order and Appendix.

NATIONAL LABOR RELATIONS BOARD

v.

MERCEDES-BENZ U.S. INTERNATIONAL, INC

ORDER

Mercedes-Benz U.S. International, Inc. (MBUSI), Vance, Alabama, its officers, agents, successors, and assigns shall

1. Cease and desist from
 - (a) Maintaining a work rule which employees reasonably could understand to prohibit solicitation of employees not on working time by other employees not on working time in working areas.
 - (b) Prohibiting employees not on working time from distributing literature to other employees not on working time in a mixed use area. In MBUSI's plant, only the atrium has been determined to be a mixed use area.
 - (c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Rescind the rule in its employee handbook that prohibits solicitation of employees not on working time by other employees not on working time in working areas.
 - (b) Furnish employees with an insert for the current employee handbook that (1) advises that the unlawful provision has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or publish and distribute to employees revised employee handbooks that (1) do

not contain the unlawful provision, or (2) provide a lawfully worded provision.

- (c) Within 14 days after service by the Region, post at its facility in Vance, Alabama, copies of the Notice to Employees attached hereto as "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by MBUSI's authorized representative, shall be posted by MBUSI immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if MBUSI customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB No. 9 (2010). Reasonable steps shall be taken by MBUSI to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, MBUSI has gone out of business or closed the facility involved in these proceedings, MBUSI shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by MBUSI at any time since June 20, 2013. *Excel Container, Inc.*, 325 NLRB 17 (1997).
- (d) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that MBUSI has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**Posted Pursuant to a Judgment of the
United States Court of Appeals Enforcing
an Order of the National Labor Relations Board**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT maintain a rule prohibiting employees who are not on working time from discussing the union, or other matters relating to wages, hours, terms and conditions of employment, with other such employees in work areas of our plant.

WE WILL NOT prohibit employees who are not on working time from distributing literature to other such employees in nonwork areas and mixed use areas of our plant, including atriums.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the rule in our employee handbook that prohibits solicitation of employees not on working time by other employees not on working time in working areas.

WE WILL supply you with an insert for the current employee handbook that (1) advises that the unlawful provision has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or

WE WILL publish and distribute revised employee handbooks that (1) do not contain the unlawful provision, or (2) provide a lawfully worded provision.

MERCEDES-BENZ U.S. INTERNATIONAL, INC.